IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 620 of 2000.
Judgment reserved on 24.9.2007.
Date of Decision: September 25th, 2007.

State of H.P. Appellant.

Versus

Prem Singh. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent : Shri N.K. Thakur, Advocate with Mr. Deepak Singh Rana.

Surinder Singh, J .

The trial court acquitted the respondent for the offence under Sections 451,323 and 506 of the Indian Penal Code, which has been assailed in this appeal, on the ground that the learned trial court brushed aside the evidence of the injured without any cogent reasons.

I have heard Shri V.K.Verma, learned Additional Advocate General for the State-appellant and Shri N.K. Thakur, learned counsel for the respondent and have gone through and re-apprised the evidence of the prosecution.

In brief, the prosecution case has been that on 2.6.1998, Sita Devi complainant along with her **Bua** Amravati was cooking the food outside the kitchen in the courtyard. The respondent, who was their neighbour, came there under intoxication at about 9 p.m. and hurled the abuses to them and gave fist blows and slaps to Sita Devi aforesaid. When Smt. Amravati intervened, she was also given beatings. On hearing their cries, Shakuntla, Sagru,

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes

Anil Kumar and Satya came there and rescued from the respondent and while leaving that place, the respondent is alleged to have threatened the complainant. Therefore, the complainant along with her husband and Amravati visited the police station and lodged FIR Ext.PW1/A under the aforesaid sections. Police got the complainant and Amravati medically examined and obtained their medico legal certificates Exts.PW6/A and B, respectively. The site plan Ext.PW5/A was also prepared and after recording the statements of the witnesses, the case was presented in the court for trial.

The notice of accusation under the aforesaid sections was put to the respondent. He did not plead guilty and claimed trial. After the prosecution examined the witnesses, the respondent was also examined under Section 313 of the Code of Criminal Procedure, however, no defence was led. The learned trial court on the appreciation of the evidence of the prosecution found that PWs 2 to 4 were closely related to the complainant. There has been a criminal case against the complaint, at the instance of the respondent. The complainant did not depose, in what manner she was given beatings. In the court, when examined, she did not state that the respondent had entered in the courtyard under the influence of liquor, as disclosed by her in the FIR. Similarly Shakuntla Devi (PW2) did not state the manner in which the respondent had given beatings to the complainant and her **Bua** Amravati. Even she has added further which was not even the case of the complainant that complainant got injury on her teeth and one tooth was broken which was lying on the spot and the broken tooth was also handed over to the Doctor. This shows her anxiety and interestedness to implicate the respondent leaving no room for his escape. The trial court on critical examination of the

prosecution evidence had also noticed that the place of incident, as alleged by the complainant was different from the place of incident as shown in the site plan Ext.PW4/A and the statement made by Amravati (PW3) is an exaggerated version worth rejecting and the Doctor did not rule out the possibility of the injuries on the person of the injured by a fall. Thus, in view of the contradictory evidence, the trial court did not rely upon the prosecution evidence at all and acquitted the respondent by giving him the benefit of a reasonable doubt.

To controvert the aforesaid reasons, the learned Additional Advocate General has forcefully argued that the testimony of the injured inspires confidence which can be acted upon. But in my view because of the old rivalry and history of criminal cases against each other the testimony of the injured and her witnesses requires close scrutiny. The testimony of Sita Devi injured did not inspire confidence as she has given exaggerated version in her statement quite different from the FIR that the respondent had a bad eye on her and he compared himself with the physique of her husband and told her to submit to his illegal designs and that he would provide everything to her. She has admitted that her husband was convicted for the offence under Section 354 of the Indian Penal Code and she alongwith her husband is facing trial under Section 451, 323, 352 and 354 of the Indian Penal Code.

The statement of Amravati is also exaggerated and both injured person being close relatives have tried to rope in the respondent in the offence charged by any means. However, on the critical analysis of the evidence of the prosecution, I am of the opinion that the case of the prosecution lacks probity. Thus, in the aforesaid background and in my considered opinion, the embellishment, contradictions and exaggerated versions given by

the injured persons their testimonies cannot be banked upon. Accordingly, the appeal is dismissed.

The respondent is discharged of the bail bonds, entered upon at any time during the proceeding of this case.

September 25th, 2007. (Surinder Singh)
(Pds) Judge.